IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1127 OF 2005

Reliance Industries Limited,
a company incorporated under
the Companies Act, 1956,
having its registered office
at Maker Chambers IV, Nariman
Point, Post Box 11717,
Bombay-400 021. .... Appellants.
(Orig. Plaintiffs)

Versus

1. P & O Containers Limited,
a body corporate having
its office at 12000
Ford Road, suit 235,
Dallas, TX 75234,
U. S. A

2. P & O (India Agencies)
Private Ltd., a company
incorporated under the
provisions of the
Companies Act, 1956
having its Registered
Office at Hamilton House,
J. N. Heredia Marg,
Ballard Estate,
Bombay -400 038. .. Respondents
(Orig. Defendants)

Shri. Milind Sathe with Shri. Paritosh Jaiswal, i/b M/s Puranand and Co., for the Appellants- Original Plaintiffs.

Shri. V. R. Rambhadran, Advocate, for Respondents Nos. 1 and 2.

CORAM: S.B.MHASE &
S.R.SATHE,JJ.
DATE : 12th August 2005.

ORAL JUDGMENT (PER S.B.MHASE,J):

1. This appeal is directed against the order passed by Civil Judge, Senior Division, Panvel on 21/3/1998 below Exhibit-16 in Special Civil Suit No.61/95, rejecting the Plaint under Order-VII, Rule 11 of the Code of Civil Procedure, 1908 since the claim made by the appellants-plaintiffs for the recovery of Rs.15,67,230.72/- with future interest at the rate of 24 per cent per annum from the respondents was/is time-barred.

2. Special Civil Suit No.61/95 has been filed by the appellants on 20/06/1995 before the Civil Judge, Senior Division, Panvel for the recovery of an amount of Rs.15,67,230.72 ps. and further interest at the rate of 24 per cent per annum on Rs. 3,89,760/- from the date of the filing of the suit till realisation. The appellants carry on business as manufacturers of Purified Therpthlic Acid (P.T.A.). One of the essential ingredients required by the appellants for the manufacture of P.T.A. is Hydrobromic Acid. In August 1993, the appellants had placed an order for the purchase of a total quantity of 32.48 metric tons of Hydrobromic Acid with one M/s First

Intercontinental Corporation, Irving, Texas 7506,U.S.A. for a total price of US$ 24360. In view of the said order, the said M/s. First Intercontinental Corporation shipped two container-load of Hydrobromic Acid containing 112 drums amounting to total 32.48 metric tons of Hydrobromic Acid through respondent no.1 and/or ship line of respondent No.1 and/or the vessel of respondent no.1. According to the appellants, the aforesaid two containers were shipped and carried on respondent No.1's vessel "S.S.Orient Triump". Respondent No.1 issued Bill of Lading dated 16th July 1993 and accordingly respondent assured the responsibility and liability of the said delivery of the aforesaid two containers to the appellants. The appellants have paid a sum of US $ 24360 to M/s. First International Corporation, being the purchase price of the said Hydrobromic Acid. According to the appellants, it was the responsibility and duty of the respondents to prepare Import General Manifest (IGM) correctly and to ensure that all the relevant details pertaining to the cargo and the containers were properly stated in their IGM. According to the appellants, the said vessel S.S.Orient Trump carrying the said two containers containing Hydrobromic Acid arrived at Nhava-Sheva Port on 24/08/1993. However, as the IGM prepared by the Respondents did not correctly state the

details pertaining to the containers, the said containers were attached by the Customs Department since there was a manifest violation of the provisions of the Customs Act. It is alleged that the IGM did not disclose two containers, but it only disclosed one container and therefore, the containers were seized . The Appellants have stated that the appellants learnt about the fact of the containers being seized by the Customs Authorities, and therefore, on 14th September 1993 and 9th October 1993, the appellants requested the respondents to take immediate steps in clearance of the said two containers from the custody of the Customs Authorities and informed the Respondents that the delay in clearance would result in production loss to the appellants for which the Respondents would be held responsible and liable. The Appellants further have stated that with considerable efforts on the part of the appellants and the clearing agents, one container of Hydrobromic Acid was released by the Customs Authorities on 31/12/1993. However, the Customs Authorities did not release the second container of Hydrobromic Acid. The Customs Authorities initiated proceeding for the confiscation of the other Container. The appellants desired prompt clearance of the second container. Therefore, by a letter dated 12th January 1994 and by various telexes dated 28.2.1994, 01/03/1994

and 11/03/1994 and by another letter dated 12/3/1994, the appellants repeatedly requested the Respondents to release the container. It is alleged by the appellants that by the fax message dated 23.3.1994, Respondent No.1 admitted the negligence on their part in not manifesting one of the containers in the IGM. On the date of the suit, the second container is still in the custody of the Customs Authorities, and therefore, the suit for recovery of the price of Hydrobromic Acid from the second container amounting to Rs.3,89,760/-. Further amount of Rs.15,67,320/-, being the aggregate of the purchase price of the said Hydrobromic Acid, the production loss suffered and the interest thereon as per the particulars of claim annexed at Exhibit ‘M’ to the plaint.

3. According to the Appellants, Respondent No.1 carries on business as ship charterers, carriers, freight -forwarders and container operators. Respondent no. 2 is an agent in Bombay office of respondent No. 1, and both the respondents are liable to see that the consignment is delivered properly. Thus both are liable.

4. Upon service of the summons, the respondents have submitted the application at Exhibit 16 raising a preliminary objection under Order VII, Rule 11 of the

Code of Civil Procedure to the effect that the suit is barred by law, that is to say, by the Law of Limitation. The Respondents relied upon the facts as pleaded by the appellants and stated that the claim of the appellants is based against the respondents on the Bill of Lading issued by Respondent no.1 and thereby the privity of contract between the Appellants and the Respondents is through the Bill of Lading, which is subject to the various terms and conditions printed on the face of Bill of Lading and also on the reverse thereof. The said Bill of Lading is subject to the provisions of the Hague Rules. The Respondents raised the contention that **Article III, Rule 6** of the Hague Rules provides :

> **"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of goods or of the date when they should have been delivered.''**

The respondents claimed that the vessel having been admittedly arrived at Port Nhava-Sheva on or about 24.8.1993, and goods having been despatched on or about the same date, the suit ought to have been filed on or

before 24.8.1994; and the suit which has been filed on 20/6/1995 is beyond the period of one year, and therefore, barred by Law and the same be dismissed.

5. The Civil Judge, Senior Division, Panvel, after hearing both sides and considering **Article III, Rule 6 of the Hague Rules and the provisions of the Indian Carriage of Goods by Sea Act, 1925 and equally AIR 1990 Bombay High Court in the matter of K.S. Abdul Sattar & Anr. Vs. Issak Adam and Anr,** came to the conclusion that since the goods were not delivered on the due date, that is to say, when the vessel came to Nhava-Sheva Port on 24.8.1993, and since the Suit was not instituted within a period of 12 months from the said date, the respondents stand discharged from the liability in respect of the loss or damage. The trial Court relied on **AIR 1972 S.C.1405 in the matter of American Export Isbrandtsen Lines Inc. and another Vs. Joe Lopez & another** and ultimately rejected the suit under Order VII, Rule 11 of the Code of Civil Procedure allowing the application at Exhibit 16.

6. Learned Counsel for the appellants raised the first contention that the lower Court committed an error in relying upon the provisions of the Indian Carriage of

Goods by Sea Act, 1925, and Article III, Rule 6 reflecting the Rules provided in the Schedule of the said Act. Learned Counsel submitted that the said Act is not applicable for import. Even though the said Act has been passed to incorporate the Rules of International Conference on Maritime Law held at Brussels in 1922, known as "Hague Rules", yet it does not apply to the import of goods. It applies in connection with the carriage of goods by sea in ship carrying goods from any Port in India to other Port whether in or outside India. Thus, he submitted that error has been committed by the lower Court in applying the Hague Rules, which have been given the statutory effect by the Indian Carriage of Goods by Sea Act,1925. Learned Counsel submitted that the suit of the appellants is governed by Article 11 of the Indian Limitation Act, and the period of limitation is 3 years as provided in Article 11 and submitted that the suit filed by the appellants is within limitation.

7. The submission of learned Counsel for the appellants to the effect that the provisions of the Indian Carriage of Goods by Sea Act , 1925 are not applicable to the import of goods, though opposed by the respondents, is found to be valid in view of **1990(48) E.L.T. page 481 (S.C.) in the matter of British India**

Steam Navigation Company Limited Versus Shanmughavilas Cashew Industries. It is observed in para 47 as under;

> "None of the parties having repudiated the bills of lading in this case, the High Court ought not to have accepted the submission of the first respondent that clause 4 of the bills of lading offended the provisions of the Carriage of Goods by Sea Act, 1924 and therefore, bad. The Carriage of Goods by Sea Act of 1924 of England was on the Hague Rules which were amended by Brussels Protocol 1968 which is now embodied in the Carriage of Goods by Sea Act 1971 which came into force in 1977. The Indian Carriage of Goods by Sea Act, 1925 (Act XXVI of 1925) which is an Act to amend the law with respect to the carriage of goods by sea was passed after the International Conference on Maritime Law held at Brussels in October 1922 and Brussels meeting in October 1923. Under Section 2 of that Act which deals with application of rules it is provided:‘‘Subject to the provisions of this Act,the rules set out in the Schedule (hereinafter referred to as ‘‘the Rules’’) shall have the effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in India to any other port whether in or outside India.’’ To apply the Rules to a case, the port of origin has to be an Indian Port. Unless the starting point or the port of loading is a port in India the Rules

> are inapplicable. These Rules have no application when goods are not carried from any Indian Port. As in the instant case goods were shipped in Africa and carried to Cochin, this Act obviously was not applicable."

. Thus, we accept the submission of learned Counsel for the appellants that the lower Court committed an error in applying the provisions of the Indian Carriage of Goods by Sea Act, 1925.

8. However, learned Counsel for the Respondents submitted that admittedly the contract between the Appellants and the Respondents is governed by the Bill of Lading, and the Bill of Lading incorporates the Hague Rules as a part of the contract. He submitted that the unamended Hague Rules are applicable. He relied upon the definition of "Hague Rules" from Term No. 1 of the terms and conditions of the Bill of Lading and, further relying upon the Term No. 5 of the Bill of Lading, submitted that the Hague Rules as amended in 1968 and 1979 are not applicable to the present contract, but the Hague Rules as were accepted in 1924 are applicable. Relying upon this, he submitted that Rule No. 6 of Article III of the Hague Rules will apply, and since the suit has not been brought within one year after the delivery of the goods or the date when the goods should have been delivered,

the respondents - carriers and shippers stand discharged from all liabilities in respect of the loss or damage.

9. Learned Counsel appearing for the Appellants submitted that the relationship of the Appellants and the Respondents is governed by the Bill of Lading, and thus, he accepted that the contractual relationship arising between the Appellants and the Respondents is on the basis of the Bill of Lading. He submitted that the Hague Rules, which were framed in 1924, have been amended by the Protocol signed at Brussels on 24.2.1968 and by the Protocol signed at Brussels on 21.12.1979 and thus he invited our attention to the amendment carried out in paragraph (3) of Rule No. 6 of Article III of the Hague Rules wherein the following words were added.

"Period may be extended if party so agrees after the cause of action."

Relying upon this part of the amended Rules, learned Counsel for the Appellants submitted that by the implied agreement between the parties, the period is extended and the suit filed by the plaintiffs-Appellants is within limitation. Alternatively, learned Counsel for the Appellants submitted that the unamended Hague Rules as provided in Rule 6 of Article III of the 1924 Hague Rules is void and inapplicable in India in view of the

provisions of section 28 of the Indian Contract Act. In view of the rival submissions made by learned Counsel for both sides, the following questions arise for our consideration.

i) How the transaction and the relationship of the Appellants and the Respondents is to be regulated,

ii) Whether the Hague Rules as amended by the Protocol signed at Brussels on 23.2.1968 and the Protocol signed at Brussels on 21.12.1979 are compulsorily applicable in India.

iii) Whether the unamended Hague Rule No.6 of Article 3 is void and inapplicable in view of the provisions of section 28 of the Indian Contract Act.

10. The answer to point No. 1 can be recorded by
concession, namely, both learned Counsel have submitted that the transaction between the Appellants and the Respondents is to be covered by the contractual relationship based on the Bill of Lading which, according to them, is an international contract. Apart from that,

we find from para 48 of the ruling in the case of **British India Steam Navigation Co. Ltd. v. Shanmughavilas Cashew Industries, 1990 (48) E.L.T. 481 (S. C.)** while observing in respect of the Bill of Lading as an international contract, the Apex Court has observed as under:

> **"There is nothing to show that the charterprty was by way of demise, Pacta dant legem contractui - the stipulations of parties constitute the law of the contract. Agreements give the law to the contract. Clause 4 having been a stipulation in the contract evidenced by the bills of lading the parties could not resile therefrom."**

11. Thus, we conclude that the relationship and the dispute between the parties, namely, the appellants and the respondents, will have to be decided on the basis of the terms and conditions as incorporated in the Bill of Lading only.

12. This takes us to the point No. 2 because the Bill of Lading makes a reference to the Hague Rules. The

question is whether the Hague Rules as were framed in 1924 shall only apply or the Hague Rules as amended in 1968 and 1979 shall apply, because the Appellants rely upon the amended Hague Rules in order to maintain their suit within the limitation. As against that, the respondents are relying upon the unamended Hague Rules so as to show that the suit filed by the appellants is barred by limitation. In order to analyse the controversy, we put up the provisions, the terms and conditions as disclosed from the Bill of Lading relevant for our purpose. The Hague Rules have been defined in term No.1 as follows :

> **"Hague Rules"** means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25th August 1924 and includes the amendments by the Protocol signed at Brussels on 23rd February, 1968, but only if such amendments are compulsorily applicable to this Bill of Lading. (It is expressly provided that nothing in this Bill of Lading shall be construed as contractually applying said rules as amended by said

Protocol).

Term No. 5 is as follows :

> **"The Carriers' responsibility- port- to- port shipment:-** If carriage is port- to- port, the liability (if any) of the Carrier for loss of or damage to the goods occurring from and during loading onto any sea-going vessel upto and during discharge from that vessel or from another sea-agoing vessel into which the goods have been transhipped shall be determined in accordance with any national law making the Hague Rules compulsorily applicable to this Bill of Lading, or in any other case, in accordance with the Hague Rules, Articles 1 - 8 inclusive."
>
> The Carrier shall be under no liability whatsoever for loss of or damage to the Goods, howsoever occurring, if such loss or damage arises prior to loading onto or

subsequent to discharge from the vessel. Notwithstanding the above, in case and to the extent that any applicable compulsory law provides to the contrary, the Carrier shall have the benefit of every right, defence, limitation and liberty in the Hague Rules as applied by this clause during such additional compulsory period of responsibility, notwithstanding that the loss or damage did not occur at sea."

. Article III, Rule 6 of the Hague Rules unamended as per 1924 Rules is as follows:

"Article III, Rule 6 : Unless the notice of loss or damage and a general nature of such a loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods in to the custody of the person entitled to the delivery thereof under the contract of carriage, or

if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the Bill of Lading.

The notice in writing need not be given if the state of tahe goods goods has, at the time of their receipt, been the subject of a joint survey or inspection.

In any event, the carrier and ship shall be discharged from all liability in respect of the loss or damage unless the suit is brought within one year after the delivery of the goods, or the date when the goods should have been delivered. In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods. "

13. This rule was amended by the 1968 and 1979 rules by the Protocol signed at Brussels. Paragraphs 1, 2 and 4

of the said Rules remained unchanged. However, paragraph (3) remained as it is, but at the end of the said paragraph, the folioing portion was added.

> **" This period may, however, be extended if the parties so agree after the cause of action has arisen."**

14. Since the appellants are trying to take the benefit of this latter amended portion of paragraph (3) of Rule 6, Article III quoted above, it has become necessary for us to find out whether the Hague Rules as amended by the 1968 and 1979 Protocols signed at Brussels are applicable. In this respect, we would like to point out that we have quoted the definition of "Hague Rules" as available from the Bill of Lading. In the said definition, it is made clear that only if the amendments are compulsorily applicable to the Bill of Lading it will be applicable. It is further made crystal-clear that nothing in this Bill of Lading shall be construed as contractually applying the said Rules as amended by the other Protocol. Thereby as a result of the contract coming into existence by the Bill of Lading, it cannot be inferred that the Hague Rules, as amended in 1968 and 1979, were applicable to the parties. Thus, further it

will be clear on reading the term No.5 which provides that the port liability of the carrier for the loss or damage to the goods occurring from and during the loading on to any sea-going vessel upto and during discharge from the said vessel, etc., shall be determined in accordance with the national law making the Rules compulsorily applicable to this Bill of Lading or in any other case in accordance with the Hague Rules, Articles I to VIII inclusive. This contemplates that there should be a national law which will be compulsorily applicable to this Bill of Lading. However, we find that the Indian Carriage of Goods by Sea Act, 1925 has been amended as per the Protocol signed at Brussels in 1968 and 1979 and the amended Hague Rules have been incorporated to the Schedule as appendix to the said Act. It will be evident from the preamble part wherein it is stated

> **" AND WHEREAS the said rules were amended by the Protocol signed at Brussels on 23rd February 1968 and by the Protocol signed at Brussels on 21st December, 1979."**

Thus, not only the preamble to the Act was amended, but the Schedule was also amended. However, as we have earlier analysed, this Indian Carriage of Goods by Sea

Act, 1925 is not applicable in the facts of this case. Section 2 of this Act states :

> **" Subject to the provisions of this Act, the rules set out in the Schedule (hereinafter referred to as 'the Rules' shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in India to any other port whether in or outside India."**

Thus, in the Schedule, the amended Hague Rules have been provided for. However, this section contemplates that one of the port from which the goods are to be sent shall be an Indian port. If the goods are received from the foreign port, namely, if it is an import from a port other than Indian port, then this Act and the Rules as incorporated in the Schedule are not applicable.

15. We have relied upon the ruling in the case of **British India Steam Navigation Co. Ltd. v. Shanmughavilas Cashew Industries, 1990 (48) E.L.T. 481 (S. C.)** (supra) and have held that the provisions of the Indian Carriage of Goods by Sea Act are not applicable.

In the result, by the national law of the land of this country, the Hague Rules as amended in 1968 and 1979 are not applicable to the import of goods from a port which is not an Indian port and, resultantly, we have to hold that the present Bill of Lading between the appellants and the respondents is not covered by the Hague Rules as are amended in 1968 and 1979. Thereby the present Bill of Lading falls in an otherwise category, namely, the Hague Rules as unamended will be applicable. The result is that the portion of paragraph (3) of Rule 6 of Article III, as amended in 1968 and 1979, which is to the following effect :

> **"This period may howevver be extended if by the party so agreeing after the cause of action has arisen"**

is not applicable to the present Bill of Lading and, therefore, the appellants cannot take the benefit of this amended clause and so by implied conduct of the parties the period of limitation cannot stand extended. Thus we record our finding that the present Bill of Lading between the appellants and the respondents is governed by the unamended Hague Rules as submitted by learned Counsel for the respondents and we answer this point in favour of

the respondents.

16. This takes us to consider as to whether paragraph (3) of Rule 6 of Article III, namely,

> **" In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered"**

is void as contended by learned Counsel for the appellants. This point is no more *res integra*. In the recent judgment in the case of **National Insurance Co. Ltd. v. Sujir Ganesh Nayak & Co. and Another, (1997) 4 Supreme Court Cases 366.** In paragraph (16) thereof, the Apex Court has observed as follows :

> "From the case-law referred to above the legal position that emerges is that an agreement which in effect seeks to curtail the period of limitation and prescribes a shorter period than that prescribed by law would be void as offending Section 28 of

the Contract Act. That is because such an agreement would seek to restrict the party from enforcing his right in Court after the period prescribed under the agreement expires even though the period prescribed by law for the enforcement of his right has yet not expired. But there could be agreements which do not seek to curtail the time for enforcement of the right but which provides for the forfeiture or waiver of the right itself if no action is commenced within the period stipulated by the agreement. Such a clause in the agreement would not fall within the mischief of section 28 of the Contract Act. To put it differently, curtailment of the period of limitation is not permissible in view of section 28, but extinction of the right itself unless exercised within a specified time is permissible and can be enforced. If the policy of insurance provides that if a claim is made and rejected and no action is commenced within the time stated in the policy, the benefits flowing from the

> policy shall stand extinguished and any subsequent action would be time-barred. Such a clause would fall outside the scope of section 28 of the Contract Act. This, in brief, seems to be the settled legal position. "

17. Thus, the Apex Court has summarised the law on the point. Therefore, we will have to scrutinize paragraph (3) of Rule 6 of Article III in the light of this observations to find out as to whether by the said paragraph the period of limitation has been curtailed and/or it provides for simpliciter forfeiture because if it curtails the period of limitation, then it will have to be held as void. However, if it provides for any forfeiture, then it will be a valid one.

18. Learned Counsel for the appellants relied upon the ruling in the case of **Mahajan Silk Mills v. M. V. MSC Elena, 2000 (3) Bom. C. R. 841,** wherein the learned Single Judge of this Court has considered section 28 of the Contract Act as amended by Amending Act (1) of 1997 and Article III and Clause 6 of the Carriage of Goods by Sea Act, 1925 and, referring to amended Article III, rule 6, has held that the said clause is void, inoperative to

the extent that it limits the time to institute suit or extinguishes the right of the plaintiffs to file a suit. We must emphasise that this judgment of the learned single Judge of this Court is not applicable to the facts of the present case because the suit in that case was filed after section 28 of the Contract Act was amended in 1997 and the facts involved were of subsequent year to that of 1997. So also the amended clause of the Hague Rules was considered which we have already held as not applicable in India when the port of despatch is not Indian Port. On the contrary, from the facts of the abovereferred judgment, it appears that the port from which the goods were despatched and the Bill of Lading was issued is a Mumbai, i.e., Indian Port and therefore the Cariage of Goods by Sea Act as amended by the Brussels Protocols of 1968 and 1979 was applicable. In this respect, we have already held that the said Act is not applicable to the facts of this case as discussed in the earlier para of this judgment. Therefore, we find that the point for consideration in that case and the present case in relation to the clauses of the Hague Rules was different. Therefore, we thus distinguish the said case and refrain from looking into it. In the case which we are dealing with, this Amending Act of 1997 is not applicable because the suit is of 1995 and the facts

involved in the present case are of the earlier year than 1997. Therefore, we have to see whether on the date of the filing of the suit in 1995, the suit is within limitation and whether the rights to file suit have been extinguished in view of the said clause. According to us, the said clause is not void to section 28 of the Contract Act. We are supported in our view by the ruling of the Apex Court in the case of **East & West Steamship Co. v. S. K. Ramalingam, A.I.R. 1960 S. C. 1058.** The Apex Court in paragraph (25) has observed as under :

> "The question we have to decide is whether in saying that the ship or the carrier will be "discharged from liability", only the remedy of the shipper or the consignee was being barred or the right was also being terminated. It is useful to remember in this connection the international character of these rules, as has been already emphasised above. Rules of limitation are likely to vary from country to country. Provisions for extension of periods prescribed for limitation would similarly vary. We should be slow therefore to put on the

word "discharged from liability" an interpretation which would produce results varying in different countries and thus keeping the position uncertain for both the shipper and ship owner. Quite apart from this consideration, however, we think that the ordinary grammatical sense of " discharged from liability" does not connote " free from the remedy as regards liability" but are more apt to mean a total extinction of the liability following upon an extinction of the right. We find it difficult to draw any distinction between the words "absolved from liability" and " discharged from liability" and think that these words " discharged from liability" were intended to mean and do mean that the liability has totally disappeared and not only that the remedy as regards the liability has disappeared. We are unable to agree with the learned Judge of the Madras High Court that these words merely mean that "that even though the right may inhere in the person who is entitled to the benefits,

> still the liability in the opposite party is discharged by the impossibility of enforcement." The distinction between the extinction of a right and the extinction of a remedy for the enforcement of that right, though fine, is of great importance. The Legislature could not but have been conscious of this distinction when using the words "discharged from all liability" in an Article purporting to prescribe rights and immunities of the shipowners. The words are apt to express an intention of total extinction of the liability and should, specially in view of the international character of the legislation, be construed in that sense. It is hardly necessary to add that once the liability is extinguished under this clause, there is no scope of any acknowledgment of liability thereafter. "

19. Thus, the Apex Court has held that this clause operates for extinction of the liability and does not curtail the remedy available under the law. This clause has been already interpreted as not pertaining to the

right of limitation, but it is a clause pertaining to the discharge or extinction of the liability. Thus, viewed, it is a clause not curtailing the limitation and applying the test as laid down by the Apex Court in the case of **National Insurance Co. Ltd. v. Sujir Ganesh Nayak, (1997) 4 Supreme Court Cases 366 (supra)**, we find that paragraph (3) of Rule 6 of Article III of the unamended Hague Rules is a valid clause and is not void as per the provisions of Section 28 of the Indian Contract Act.

20. Once we find that the clause is valid, then the question that arises is as to when the time starts to run to extinguish the liability. On a careful reading of this clause, it will be revealed that the time starts to run from the date of delivery of the goods or from the date when the goods should have been delivered. The Apex Court has held in the case of **American Export Isbrandtsen Lines v. Joe Lopez, (1973) 2 Supreme Court Cases 30,** that the last date for filing the suit for "loss or damage" is one year from the date the ship left the port, that is to say, from the date on which the ship came in the port for delivery and the ship left the port without delivery the time will start.

21. Now, in our case, it is an admitted fact that the

ship arrived at the Nhavashehva Port on 24.8.1993 and the Customs Authorities have seized the containers. Thus, the cause of action for nondelivery of container is 24.8.1993. It has become evident that the delivery of container cannot be given since there are no required documents for the delivery of the container. Therefore, the action should have been brought within that period. It is evident fact that the ship has immediately left after the goods were seized by the Customs Authorities. Therefore, in 1995 when the suit was filed, the right to claim damage or loss in view of the contract of Bill of Lading was extinguished and therefore it was a claim in respect of the extinguished rights and liabilities and the suit was not maintainable.

22. Therefore, we find that the findings recorded by the trial Court that the suit is not tenable and is barred by limitation is justified. We find that there is no substance in the First Appeal and we hereby dismiss the same. Costs, costs in the cause.

(S. R. SATHE, J.) **(S. B. MHASE, J.)**